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THAT ONE VIDEO ENTERTAINMENT, LLC, a
California limited liability company

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

THAT ONE VIDEO
ENTERTAINMENT, LLC, a
California limited liability company,

Plaintiff,
vs.

KOIL CONTENT CREATION PTY
LTD., an Australian proprietary
limited company doing business as
NOPIXEL; MITCHELL CLOUT, an
individual; and DOES 1-25, inclusive,

Defendants.

CASE NO: 2:23-cv-02687 CAS (JCx)

[Assigned to the Hon. Stephen V. Wilson;
Ctrm 10A]

**DECLARATION OF BENJAMIN LAU IN
SUPPORT OF PLAINTIFF'S MOTION
TO QUASH, OR, IN THE
ALTERNATIVE, FOR A PROTECTIVE
ORDER**

Hearing:

Judge: Hon. Jacqueline Chooljian

Date: September 10, 2024

Time: 9:30 a.m.

Place: Ctrm 750, 255 East Temple Street,
Los Angeles, California, 90012

Action Filed: April 10, 2023

Trial Date: September 17, 2024

**DECLARATION OF BENJAMIN LAU IN SUPPORT OF PLAINTIFF'S
MOTION TO QUASH, OR, IN THE ALTERNATIVE, FOR A PROTECTIVE
ORDER**

DECLARATION OF BENJAMIN LAU

I, Benjamin C. Lau, declare and state as follows:

1. I am an attorney duly licensed to practice law in the State of California and before this Court. I am a principal at the law firm Jackson Lewis, P.C., which is immigration counsel for THAT ONE VIDEO ENTERTAINMENT, LLC, a California limited liability company (“TOVE” or “Plaintiff”), the Plaintiff in this action. I know all of the following facts of my own personal knowledge and, if called upon and sworn as a witness, could and would competently testify thereto.

2. On or about July 17, 2024, I received an email from Larry Zerner, Esq., who represented himself as counsel for Defendants KOIL CONTENT CREATION PTY LTD., an Australian proprietary limited company doing business as NOPIXEL (“NoPixel”), and MITCHELL CLOUT, an individual (“Clout”) (collectively, “Defendants”). This Declaration is intended to serve as my response to claims made by Mr. Zerner in his July 17, 2024 email correspondence, which is attached to the Declaration of John Begakis as Exhibit “C” and incorporated herein by this reference.

3. To begin with, Mr. Zerner contends that Jacque Khalil, as the principal and Chief Operating Officer of TOVE, submitted an H-1B visa application that contained “false information.” Specifically, Mr. Zerner claims that “[i]n the application, Mr. Khalil was asked if Tracey would be placed with a secondary entity and responded, ‘no.’” However, the instructions for the Labor Condition Application, the Department of Labor form where this question appears, clarifies that this information need only be disclosed if Daniel Tracey, TOVE’s employee, would be placed at a worksite that was controlled by a third-party, not whether the work completed by Tracey was for a third-party. The question *in its entirety* is simply asking whether Mr. Tracey would be physically placed at a worksite that was controlled by a third-party business for which TOVE was providing services. Since it

1 is my understanding that Mr. Tracey worked remotely for Defendants and was not
2 physically placed at a third-party worksite, the answer was “no.”

3 4. Mr. Zerner also contends that Mr. Khalil submitted a letter as part of the
4 visa application that was untrue because it supposedly omitted various information
5 about the details of Mr. Tracey’s arrangement with Defendants. Specifically, Mr.
6 Zerner claims that “[t]he letter gives the approximate amount of time that Danny
7 would be working at each task for TOVE” but that Mr. Khalil stated in his deposition
8 that “Tracey also was required to stream himself gameplaying on Twitch” and
9 “somehow none of this was mentioned in the letter...” However, the H-1B visa
10 application included that ten percent (10%) of Mr. Tracey’s job duties would be to
11 “[c]reate video tutorials demonstrating software modifying techniques and general
12 media content discussing software modifying strategies for interactive multimedia
13 entertainment productions.” As described, this job duty would include streaming of
14 certain content on Twitch, particularly content of Mr. Tracey demonstrating coding
15 techniques in connection with the game. It is also important to note that the assigned
16 percentage is simply an estimate and is intended to serve solely as an approximation
17 of the average amount of time Mr. Tracey would spend on such task in a given week.

18 5. Finally, as to Mr. Zerner’s general point that various information about
19 the details of Mr. Tracey’s arrangement with Defendants were omitted from the letter
20 and the H-1B visa application, this Court should understand that U.S. immigration
21 regulations do not require that a visa petitioner (in this case, TOVE) disclose that the
22 beneficiary of the visa (in this case, Mr. Tracey) will be working for any particular
23 third party (in this case, Defendant NoPixel). So long as the employer-employee
24 relationship between the petitioner and the beneficiary is met, and the worksite
25 information is correct, then the visa requirements are met.

26 ///

27 ///

1 I declare under penalty of perjury under the laws of the State of California that
2 the foregoing is true and correct, and that this Declaration was executed on August
3 7, 2024, at Los Angeles, California.

4 
5 BENJAMIN LAU

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 9454 Wilshire Blvd, Suite 825, Beverly Hills, CA 90212.

On August 8, 2024, I served the documents described as:

PLAINTIFF'S MOTION TO QUASH, OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JOHN BEGAKIS IN SUPPORT THEREOF

DECLARATION OF BENJAMIN LAU IN SUPPORT OF PLAINTIFF'S MOTION TO QUASH, OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER

DECLARATION OF DANIEL TRACEY IN SUPPORT OF PLAINTIFF'S MOTION TO QUASH, OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION TO QUASH, OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER

on all interested parties in this action by placing _____ the original X a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Larry Zerner, Esq.
MORRISON COOPER LLP
10900 Wilshire Blvd., Suite 930
Los Angeles, CA 90024
larry@morrisoncooper.com
Keith@morrisoncooper.com
Kat@morrisoncooper.com

[X]: BY ELECTRONIC MAIL:

As follows: I hereby certify that I served the above-described document on the interested parties in this action by attaching an electronic copy of the document to an email addressed to the parties listed below at their most recent e-mail address of record in this action. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X]: (FEDERAL) – I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on August 8, 2024, in Los Angeles, California.


John Begakis

PROOF OF SERVICE